

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.1128 & 1129/PUN/2015  
निर्धारण वर्ष / Assessment Years : 2008-09 and 2009-10

Smt. Katunbi Badsha Bagwan,  
Bagwan House No.499,  
Parvati Sah. Sanstha,  
Near Onkareshwar Temple,  
Ichalkaranji  
PAN : AAYPB5128J

.... अपीलार्थी/Appellant

Vs.

Dy. Commissioner of Income-tax,  
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1131 & 1132/PUN/2015  
निर्धारण वर्ष / Assessment Years : 2008-09 and 2009-10

Shri Imran Badsha Bagwan,  
Bagwan House No.499,  
Parvati Sah. Sanstha,  
Near Onkareshwar Temple,  
Ichalkaranji  
PAN : AILPB2309N

.... अपीलार्थी/Appellant

Vs.

Dy. Commissioner of Income-tax,  
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant(s) by : Shri M.K. Kulkarni  
प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal, CIT-DR

सुनवाई की तारीख / <b>Date of Hearing : 12.02.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement:16.02.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

There are four appeals filed by the two different assesseees against the common orders of CIT(A)-1&2, Kolhapur dated 29-05-2015 for the Assessment Years 2008-09 and 2009-10. ITA Nos. 1128 & 1129/PUN/2015 are filed by Smt. Khatunbi Badsha Bagwan and ITA Nos. 1131 & 1132/PUN/2015 are filed by

Shri Imran Badsha Bagwan. Since the issues raised in all the above appeals are common they are being clubbed and adjudicated in this composite order.

I shall first deal with the appeals pertaining to **Smt. Khatunbi Badsha Bagwan – ITA Nos. 1128 and 1129/PUN/2015 for A.Yrs. 2008-09 and 2009-10.**

2. Assessee has raised common grounds for the captioned two assessment years. Therefore, for the sake of reference, Grounds raised in **ITA No.1128/PUN/2015 for A.Y. 2008-09** are extracted hereunder :

*"1. On the facts and circumstances of the case and in law the Ld.CIT(A) was not justified in sustaining partial addition in respect agriculture income declared by appellant by treating 54% of the gross receipts as expenses for agriculture.*

*The appellant submits that expenses as shown by him/her while arriving at the net agricultural income being adequate to meet the cost of agriculture, partial sustaining of the addition is unwarranted.*

*The appellant prays that the AO be directed to delete the entire addition made in this respect."*

3. Before me, at the outset, Ld. Counsel for the assessee brought our attention to the above grounds and submitted that the issue raised pertains to extent of allowable agricultural expenditure incurred in connection with the agricultural income earned by the assessee on account of Agricultural operations with reference to Sugarcane, Vegetables, Grass etc. Giving the above facts of the present case, Ld. Counsel submitted that AO made addition of Rs.2,62,935/- for the A.Y. 2008-09 and computed the allowable Agricultural expenses and exempt Agricultural income for the A.Y. 2008-09. The table given in Para No.11 of the assessment order contains the details of computation of Agricultural income. The CIT(A) vide his common order for A.Yrs. 2007-08 to 2009-10 dated 29-05-2015 gave part relief in the matter. Aggrieved with the order of CIT(A), the assessee is in appeal asking for entire relief. While allowing part relief, the CIT(A) followed the earlier orders of the

CIT(A) for the A.Yrs. 1999-2000 to 2006-07. Thus, the CIT(A) have consistently adopted the figures set by his predecessor CIT(A) and allowed the Agricultural expenses at 54% of the Agricultural income of the assessee.

4. With these facts and the developments, Ld. Counsel for the assessee filed a copy of the combined order of the Tribunal dated 11-08-2017 which covers the assessee's own case along with others, i.e. – Smt. Khatunbi Badsha Bagwan and others – ITA Nos. 1217 to 1224/PUN/2012 and ITA Nos. 1334 to 1341/PUN/2012 and others for the A.Yrs. 1999-2000 to 2006-07. Ld. Counsel drew my attention to the contents of the Para No.32 & 33 of the said order of Tribunal. The same issue of agricultural income/expenditure was the subject matter in the said appeals and the Tribunal partly allowed the appeals of the assessee for the A.Yrs. 1999-2000 to 2006-07. Further, Ld. Counsel for the assessee submitted that the said decisions of the Tribunal apply to the facts and the issues raised in the present case. Ld. counsel requested for applying the ratio of the said order and decide the issue as per the conclusions of the Tribunal in earlier assessment years. With regard to existence of appeal for A.Y. 2007-08, if any, both the parties did not mention about the same.

5. Ld. DR for the Revenue relied on the order of CIT(A) dutifully.

6. I heard both the sides on this issue of determining the allowable agricultural income from Sugarcane, Grass, Vegetables etc. On perusal of the order of Tribunal dated 11-08-2017 in assessee's own case for the A.Yrs. 1999-2000 to 2006-07 (supra), I find it relevant to extract the said para Nos.32 & 33 of the order and the same reads as under :

*"32. The CIT(A) has estimated expenditure at 54%. The learned Authorized Representative for the assessee has agreed that in the absence of details not being maintained by it in respect of expenditure incurred, some estimation has to be made. However, he is aggrieved by estimation by the CIT(A) at 54%. The CIT(A)*

*has analyzed the factum of expenses incurred by the assessee and various documents and we have already perused the same and we are in conformity with the order of CIT(A) in not considering the batai expenditure as part of expenditure for computing the income from sugarcane. The CIT(A) has estimated the expenses at 54% of receipts. However, **we deem it fit to estimate the same at 50% i.e. 50%** of gross receipts would constitute the assessee's income from agricultural operations of growing sugarcane; which would form a part of cash flow of assessee and the Assessing Officer shall work out the impact of negative cash flow in the hands of assessee. The claim of learned Authorized Representative for the assessee before us is that the investments in assets stands covered after the order of CIT(A), wherein he had estimated the expenses at 54% except for negative cash balance added in assessment year 2005-06 and we have reduced the same to 50% and the Assessing Officer is directed to verify and decide the cash position in assessment year 2005-06 accordingly.*

33. *Now, coming to the next estimation of income in the hands of assessee i.e. income from **vegetables crop**. The assessee claims that part of crops were grown along with sugarcane and the balances on the land available i.e. about 30-31 acres which are under cultivation of vegetables, grass scientifically grown as cattle feed and other crops. As in the case of sugarcane, the first aspect is the percentage of expenditure incurred by the assessee for growing vegetables; the second aspect is the income from receipts from growing vegetables. Since the assessee has not maintained any details in this regard and the Assessing Officer had pointed out that there is no mention in 7/12 extracts in respect of growing of vegetables. The assessee on the other hand, points out that since vegetables were grown for duration of 3-4 months and were repeatedly being changed does not find mention in 7/12 extracts. However, the sale patties were recovered from the residence of assessee which revealed the yield of vegetables per acre in value. Both the authorities below have admitted that except for few sale patties of nominal value, majorly the sale patties of vegetables were available from the residence of assessee. In other words, there is no dispute in respect of receipts from sale of vegetables to be worked out in the hands of assessee. The only dispute remains is in respect of expenditure on growing of vegetables. The Assessing Officer in the hands of assessee had estimated the income at Rs.5,000/- per acre and after deducting on account of expenditure and batai expenses had taken the net yield at Rs.2500/- per acre. The assessee had shown the expenses at 20% and the CIT(A) had taken the expenses at 50% of the receipts and had not deducted any expenditure on account of batai. The learned Authorized Representative for the assessee fairly admitted before us that in the absence of any details being maintained, expenditure has to be estimated. The first aspect of the issue is that in the absence of any evidence found of batai expenses for growing vegetables, there is no question of deducting 50% on account of batai expenses. We uphold the order of CIT(A) in this regard. The second aspect is the percentage of expenses to be estimated on account of cultivation of vegetables. The learned Authorized Representative for the assessee pointed out that in assessment year 1999-2000, the Assessing Officer has taken the estimated expenditure at 40% which was high and the same may be adopted at 30%. Following the principles of natural justice, **we hold that in the absence of any details being maintained, it would be fair to estimate the expenditure at 35% for growing vegetables. There is no merit in the order of CIT(A) in estimating the same at 50% since the expenditure for the crop of sugarcane is higher as compared to the vegetable crops. Accordingly, we hold so.**"*

7. From the above, it is evident that, against the decision of CIT(A) allowing the expenditure at the rate of 54%, the Tribunal deemed it fit to estimate the same at

50%, i.e. 50% of the gross receipts would constitute agricultural income from the agricultural operations of growing **sugarcane**. To that extent, the Tribunal has favoured the assessee in terms of allowing the increased exempt agricultural income. Further, regarding the agricultural income from **Vegetables**, the Tribunal (at Para No.33) deemed fit to estimate the agricultural expenditure at 35% thereby quantifying the exempt agricultural income on account of vegetables at 65% of the agriculture income received by the assessee on account of vegetables. In this regard, the Tribunal disapproved the CIT(A)'s estimation adopting 50% of the agricultural expenditure on account of vegetables.

8. Therefore, Considering the same, I am of the opinion that the grounds raised by the assessee for A.Y. 2008-09 has to be decided in the lines decided by the Tribunal for the earlier A.Yrs. 1999-2000 to 2006-07. I direct the AO accordingly. I also noticed that the said order of the Tribunal (supra) in assessee's own case being dated 11-08-2017 did not exist at the time when the CIT(A) passed the order on 29-05-2015. Therefore, without going into the merits of the case, I am of the opinion that the issue stands covered in favour of the assessee. Thus, the grounds raised by the assessee are partly allowed.

**ITA No.1129/PUN/2015**  
**(AY. 2009-10)**

9. So far as the grounds raised by the assessee for A.Y. 2009-10, the issues and facts are same, arguments of both the parties are common. However, for A.Y. 2009-10, the AO has slightly deviated from his working for A.Y. 2008-09 in making the estimations of Agricultural income and Agricultural expenditure. Notwithstanding the same, the CIT(A) gave a common finding for the A.Yrs. 2007-08 to 2009-10 determining the allowable agricultural expenditure at 54% of the gross receipts relying on the orders of his predecessor for A.Yrs. 1999-2000 to

2006-07. The request of the Ld. Counsel for the assessee to follow the direction of the Tribunal for earlier assessment years 1999-2000 to 2006-07 applies to this appeal also is same. Therefore, with identical directions given in A.Y. 2008-09, I partly allow the appeal of the assessee for A.Y. 2009-10. In both the appeals, after re-computation by the AO, the assessee will get part relief qua the grounds raised before me.

9. In the result, both the appeals filed by Smt. Khatunbi Badsha Bagwan vide ITA Nos. 1128 & 1129/PUN/2015 are **partly allowed**.

10. I shall now deal with appeals pertaining to **Shri. Imran Badsha Bagwan**.

**ITA Nos. 1131 & 1132/PUN/2015**  
**(A.Yrs. 2008-09 and 2009-10)**

11. Before me, in connection with these two appeals for the A.Yrs. 2008-09 and 2009-10, Ld. Counsel for the assessee brought my attention to the common grounds raised by the assessee and submitted that the issues raised by the assessee are identical to that of Smt. Khatunbi Badsha Bagwan which was already adjudicated by me in the earlier paragraphs. He further submitted that arguments are identical. Further, he submitted that the consolidated order of the Tribunal dated 11-08-2017 covers this assessee's case also vide ITA Nos. 1195 to 1201/PUN/2012 & ITA Nos. 1320 to 1324/PUN/2012 and others for the A.Yrs. 1999-2000 to 2006-07.

12. Ld. DR for the Revenue relied on the order of CIT(A) dutifully.

13. On hearing both the sides, I find the issue raised in the above appeals of this assessee relate to the estimation of Agricultural income/expenditure earned by the assessee from Sugarcane, Vegetables, Grass etc., as in the case of Smt. Khatunbi Badsha Bagwan. Considering the same and considering the consolidated order of

the Tribunal dated 11-08-2017, where the appeals of the assessee were also decided by the Tribunal giving part relief. The finding of the Tribunal given in Para Nos. 32 and 33 which are extracted above are applicable to the assessee also. Therefore, I am of the opinion that the issues raised by the assessee are covered by the said order of the Tribunal. As a result, the common grounds raised by the assessee for both the assessment years have to be allowed partly. In both these appeals, after re-computation by the AO, assessee will get part relief qua the grounds raised before me.

14. In the result, both the appeals filed by Shri Imran Badsha Bagwan vide ITA Nos. 1131 & 1132/PUN/2015 are **partly allowed**.

15. To sum up, the appeals filed by Smt. Khatunbi Badsha Bagwan and the appeals filed by Shri Imran Badsha Bagwan for both the assessment years are partly allowed.

Order pronounced on this 16<sup>th</sup> day of February, 2018.

**Sd/-**  
**(D.KARUNAKARA RAO)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 16<sup>th</sup> February, 2018.  
 Satish

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1&2, Kolhapur
4. आयकर आयुक्त / The CIT-1&2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
 आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune